
TITLE 329 SOLID WASTE MANAGEMENT DIVISION

FIRST NOTICE OF COMMENT PERIOD

LSA Document #20-20

SOLID WASTE FINANCIAL ASSURANCE**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 10-39](#), [329 IAC 11.5-8](#), [329 IAC 11.6-9](#), and [329 IAC 11.7-9](#) concerning financial assurance requirements for solid waste facilities. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 10-39](#); [329 IAC 11.5-8](#); [329 IAC 11.6-9](#); [329 IAC 11.7-9](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

IDEM is proposing amendments to the financial assurance requirements for solid waste facilities at [329 IAC 10-39](#), [329 IAC 11.5-8](#), [329 IAC 11.6-9](#), and [329 IAC 11.7-9](#). The amendments include resolving inconsistencies in the financial assurance rules across different articles in Title 329, correcting errors in the rule language, revising outdated requirements, and proposing other changes to provide additional compliance flexibility for regulated entities and improve the administration of the financial assurance requirements.

IDEM requires owners and operators of permitted and registered solid waste facilities to demonstrate financial assurance for closure, post-closure, or corrective action. Financial assurance is a financial instrument that provides for the completion of closure, post-closure, or corrective action of a facility if, for some reason, the owner or operator is not able to perform the required activities at the facility. IDEM requires financial assurance for various types of solid waste facilities, including disposal, processing, and storage facilities. The requirement to demonstrate financial assurance reduces potential adverse effects from incomplete closure, post-closure, or corrective action of a facility by providing the necessary funds to complete these activities.

Changes in the solid waste industry and environmental regulations have led to different types of facilities and practices in waste management. IDEM has adopted financial assurance rules for new types of facilities and amended the existing financial assurance rules for established types of facilities. Changes to the financial assurance rules over the years have resulted in some errors and inconsistencies in the requirements, which IDEM proposes to address in this rulemaking. The amendments proposed for this rulemaking include the following:

- Remove requirements for submitting duplicate copies of financial assurance instruments throughout [329 IAC 10-39](#).
- At [329 IAC 10-39-2\(a\)\(1\)](#) and [329 IAC 10-39-2\(a\)\(3\)](#), [329 IAC 11.5-8-1\(c\)\(5\)\(F\)](#), [329 IAC 11.6-9-1\(c\)\(5\)\(F\)](#), and [329 IAC 11.7-9-1\(c\)\(5\)\(F\)](#), revise the requirements for a financial assurance provider's operations to be regulated by both a federal agency and state of Indiana agency to only be regulated by a federal agency or state of Indiana agency.
- Add a requirement for the letter from the chief financial officer required under [329 IAC 10-39-2\(a\)\(5\)](#) and [329 IAC 10-39-2\(a\)\(6\)](#) to be submitted on forms provided by the commissioner or other forms approved by the commissioner.
- In [329 IAC 10-39-2](#), [329 IAC 11.5-8-1](#), [329 IAC 11.6-9-1](#), and [329 IAC 11.7-9-1](#), consider only requiring standby trust funds for certain instruments when the financial assurance cost estimate is above a certain amount, such as \$20,000.
- In [329 IAC 10-39-2\(c\)](#), add the option to recalculate the closure cost estimate in current dollars to be consistent with the post-closure financial assurance requirements in [329 IAC 10-39-3](#).
- At [329 IAC 10-39-10](#), consider adding insurance as an option for corrective action financial assurance.
- Correct an issue with the restricted waste site financial test at [329 IAC 10-39-2\(a\)\(5\)\(A\)](#) that inadvertently requires rural electric membership corporations and potentially additional types of utilities to meet all criteria in [329 IAC 10-39-2\(a\)\(5\)\(B\)](#) to use the financial test rather than be subject to the same standards as utilities regulated by the Indiana utility regulatory commission. The original intent of this change in a previous rulemaking (LSA Document #11-454, DIN: [20140611-IR-329110454FRA](#)) was to include all utilities rather than inadvertently subject some utilities to more stringent requirements.
- Correct minor errors in the rule language throughout [329 IAC 10-39](#), including the following:
 - Inaccurate cross reference at [329 IAC 10-39-3\(b\)\(1\)\(C\)](#).
 - Nonessential wording in requirements at [329 IAC 10-39-1\(e\)](#) and [329 IAC 10-39-2\(a\)\(6\)\(B\)\(iii\)\(AA\)\(cc\)\(1\)](#).
 - Imprecise phrasing of the requirement at [329 IAC 10-39-2\(a\)\(3\)\(B\)\(iv\)](#).

- Other errors identified in the rule language of the included sections.

IDEM anticipates that this rulemaking will potentially affect the owners or operators of solid waste facilities that are required to maintain financial assurance and the financial institutions that issue financial assurance to the facilities. IDEM also may need to adjust some administrative processes related to changes in the financial assurance rules.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Amend the solid waste financial assurance rules to resolve inconsistencies across different articles in Title 329, correct errors in the rule language, revise outdated requirements, and propose other changes to provide additional compliance flexibility for regulated entities and improve the administration of the financial assurance requirements.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend existing rules for financial assurance of solid waste facilities.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

There are no federal laws or rules that are applicable to this rulemaking because the proposed amendments to the solid waste financial assurance rules are state-only requirements. The requirements affected by this rulemaking do not have federal counterparts or require federal approval to be implemented.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative may have a fiscal impact by amending requirements to offer potential cost savings for regulated entities. The proposed change to not require standby trust funds for certain financial assurance instruments may provide cost savings, as maintaining a standby trust fund usually has an annual cost of a few thousand dollars. The proposed change to the restricted waste site financial test could provide cost savings to certain types of utilities that own or operate restricted waste sites and currently do not meet the criteria for the financial test. As compared to other financial assurance options, the financial test typically has a lower compliance cost.

Other changes will offer more compliance flexibility for regulated entities and allow them to obtain a different and potentially lower cost financial assurance instrument. Allowing for a financial assurance provider's operations to be regulated by only a federal agency or state of Indiana agency rather than both may make additional financial assurance providers available to regulated entities. Adding insurance to the options for corrective action financial assurance and the amendments to the restricted waste sites financial test may allow regulated entities to choose a lower cost instrument.

Overall, IDEM anticipates that the proposed rule amendments in this alternative will offer potential cost savings for regulated entities by amending some requirements to be less stringent than current requirements and allowing more compliance flexibility and financial assurance options for regulated entities.

Potential Fiscal Impact of Alternative 2. This alternative does not amend the existing rules for financial assurance for solid waste facilities and does not have a fiscal impact. However, in the absence of amendments to the existing rules, some regulated entities will be required to comply with requirements that do not offer the compliance flexibility and potential cost savings from the proposed amendments in Alternative 1.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor

IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison

IGCN 1316

100 North Senate Avenue

Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhou@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
 - (2) The submission of suggestions for the development of draft rule language.
- Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #20-20 Solid Waste Financial Assurance
Dan Watts
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to dwatts1@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than March 20, 2020. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief

Posted: 02/19/2020 by Legislative Services Agency
An [html](#) version of this document.